

EXHIBIT D

ExxonMobil Company

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Guy J. Musto

Terminal Superintendent
Everett Terminal



Mr. Bryan Olson
Director
Office of Site Remediation & Restoration
U.S. Environmental Protection Agency
Region I – New England
5 Post Office Square, Suite 100
Boston, MA 02109-3912

RE: Request for substantiation from an affected business in response to a request under the Freedom of Information Act (FOIA), Request # EPA-R1-2016-001311

Dear Mr. Olson:

The ExxonMobil Everett Terminal (the "Terminal") is in receipt of your correspondence dated March 28, 2016, and received on March 31, 2016, regarding the above-referenced FOIA request seeking all documents in EPA's possession that relate to the Terminal, including the Terminal's facility response plan (FRP). This response serves as the Terminal's substantiation that, among other things, all of the site diagrams at pages 80-98 of the FRP and pages 5-23 of Appendix G of the FRP (collectively, the "Diagrams") are facility-specific, sensitive security information (SSI) and confidential business information (CBI) exempt from release to the public in accordance with 5 U.S.C. §§ 552(b)(3), (4) and (7)(F).

As set forth more specifically in No. 8, below, the Terminal asserts that several items of information in the FRP, including the Diagrams, are facility-specific SSI that must be withheld pursuant to FOIA exemptions (b)(3) and (b)(7)(F). Accordingly, the Terminal objects to the extent that any such information has already been released by EPA to the public without providing the Terminal an opportunity to substantiate such potential claims. Notwithstanding the foregoing, and without waiving any of the foregoing qualifications and objections, for the purposes of this substantiation letter, the Terminal considers the Diagrams as a single class of information that it identifies as being subject to its CBI claim. Accordingly, for such class of information and in order to substantiate its CBI claim for such class, the Terminal has included the relevant numbered questions posed in EPA's Request followed by the Terminal's response as follows:

1. *For what period of time do you request that the information be maintained as confidential? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.*

The Terminal requests that the Diagrams be maintained as confidential for the life of the facility.

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2. *Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?*

During the life of the facility, the Diagrams will remain proprietary, SSI and will be treated as CBI by the Terminal. Accordingly, the information should be protected by EPA for the entirety of such time period.

3. *What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?*

The Terminal considers the FRP, including the Diagrams, to be proprietary, SSI and CBI. Accordingly, the FRP is subjected to restricted access and kept in multi-layered, secured environments. The FRP may only be accessed by approved individuals with appropriate security clearance and producible identification. The FRP has not been disclosed to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further.

4. *Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.*

The Terminal is not aware of an instance in which a governmental body has made a determination as to the confidentiality of the Diagrams.

5. *Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?*

The FRP, including the Diagrams, is the type of information that the Terminal would not customarily release to the public. Accordingly, the Terminal does not make the Diagrams publicly available on the Internet or in any publicly available databases, promotional materials, annual reports, or articles. Upon information and belief, there are no means by which a member of the public could obtain access to the Diagrams.

6. *For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the*

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nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

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7. *Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.*

The Terminal asserts that the Diagrams are submitted on a voluntary basis. Although the Terminal acknowledges that 40 CFR §§ 112.20(h)(1)(viii), (3)(viii), and (9) require the Terminal to submit "[a] diagram of the facility," "[a] diagram of evacuation routes," and "site plan and drainage plan diagrams," the regulation does not require that the Terminal submit such diagrams in the detail or containing the specificity as voluntarily provided by the Terminal to EPA in the FRP. Given that the Facility deems the Diagrams to be proprietary, SSI and CBI, disclosure of the Diagrams by EPA would likely lead the Terminal to provide the required diagrams showing the minimally-required information in the future.

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8. Any issue you deem relevant.

[The Terminal asserts that, in addition to being CBI, the Diagrams and other information contained in the FRP constitute facility-specific SSI that should be withheld from disclosure. EPA has already released information in the FRP setting forth facility security vulnerability assessments and plans that describe the worst possible consequences that could result from a security incident, such as a terrorist attack. Now, EPA is considering releasing Diagrams that set forth detailed information about a maritime facility transferring and storing oil and/or hazardous materials in bulk and providing exact locations and specifications of the most sensitive areas of the facility. Any benefit received by the public's receipt of this information pursuant to a FOIA request is vastly outweighed by the utility of the Diagrams as a roadmap for potential terrorism. Given the Terminal's location, a security incident leading to a release at the Terminal would likely have catastrophic effects on both human life and the environment. Accordingly, the Diagrams should be withheld from disclosure pursuant to FOIA exemption (b)(3) as SSI under the Maritime Transportation Security Act (MTSA)¹. In the alternative, the Diagrams should be withheld under FOIA exemption b(7)(F), given that their release could reasonably be expected to endanger the life or physical safety of many individuals.]



Everett Terminal Superintendent
Guy J. Musto

cc: Michael Knapp, ORC
Cris Schena, R1 FOI Officer

¹ 40 C.F.R. Part 1520.